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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,338	05/25/2001	Jun Etoh	H-706-02	3538

24956 7590 03/22/2007
MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA, VA 22314

EXAMINER

MAI, SON LUU

ART UNIT	PAPER NUMBER
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2827

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.		Applicant(s)	
	09/864,338		ETOH ET AL.	
	Examiner		Art Unit	
	Son L. Mai		2827	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 53-63,65 and 70-74 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 53-63,65 and 70-74 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Reissue Applications

1. Papers filed 08/25/06 have been entered. Accordingly claims 53-63, 65, and 70-74 are pending in the application.
2. Another Consent of the Assignee needs to be filed. The Consent of the Assignee filed on 11/14/02 is just a copy of the Consent filed in the parent reissue application and cannot be used as the Consent in this reissue application. See MPEP 1451(II).

Oath/Declaration

3. The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414. The original declaration filed on 5/21/01 was just a copy of the declaration filed in parent reissue application S.N. 09/095,101 (now RE37593). See MPEP 1414(II)(D) and 1451(II). The error cited in that declaration does not appear to be the same error being corrected by the present reissue application as evidenced by the statement in that declaration that claims 13-52 were being added to correct the noted error. Further, it is extremely doubtful that the present claims (53-63, 65 and 70-74) remaining in this reissue application are claiming all the embodiments of the invention shown in Figs. 20A-36C. Finally, even if the present claims are to some of the embodiments in Figs. 20A-36C, that would not be a sufficient error in this reissue application since that error was supposedly corrected in the parent reissue application.

The errors cited in the declarations filed on 11/14/02 and 9/9/03 are just inventorship errors. While inventorship can be corrected via reissue (during prosecution of the reissue application), it is not an error which can support the filing of a reissue application if it could have been corrected by filing a request for Certificate of Correction. See MPEP 1402. The inventorship does not even appear to be an error in the original patent. The inventorship is apparently being changed in this reissue application due to the cancellation of the patent claims 1-12 and the addition of new

claims. (The supplemental declaration filed 11/14/02 is just a copy of the supplemental declaration filed in the parent reissue application.)

Applicant needs to file a new declaration ***specifically*** citing an error which is being corrected by this reissue application. The error must be one which can support the filing of a reissue application and must be cited with the specificity noted in MPEP section 1414(II)(C) – (for example, what the other claims lacked that the newly added claims have, or vice versa).

4. Claims 53-63, 65, 70-74 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son L. Mai whose telephone number is 571-272-1786. The examiner can normally be reached on M-F from 8am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amir Zarabian can be reached on 571-272-1852. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



03/14/07

Son L. Mai
Primary Examiner
Art Unit 2827